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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,485	01/28/2002	Tetsuya Kusagawa	0445-0317P	5643

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EXAMINER

REICHLER, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/18/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,485

Applicant(s)

KUSAGAWA ET AL. *qw*

Examiner

Karin M. Reichle

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-- Th MAILING DATE of this communication appears on th cover sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The amendments to claims 3 and 9 do not comply with 37 CFR 1.121, i.e. the claim does not show the original text with all the additions underlined and all the deletions struck through. Any further response should include claims 3 and 9 which are in compliance with 37 CFR 1.121.

Drawings

2. The drawings were received on 8-18-03. These drawings are approved by the Examiner. It is noted that Figure 9 would be in better form if each were labeled differently, e.g. Figure 9A and 9B, and the description section were consistently amended.

Description

3. The disclosure is objected to because of the following informalities: Applicants now claim the upright portion extending between one of the absorbing layer and a portion near a longer side edge of the absorbing layer. While, e.g., the Figures and page 3, lines 27-29 support the latter location where is the support for the extension between the absorbent layer and extensible portion?

Appropriate correction is required.

Claim Objections

4. Claims 1, 3-4 and 6-11 are objected to because of the following informalities: in claim 1, on lines 5, 6, and 8, "said" (first) should be --each--. On line 7, "a" should be --an adjacent-- and before "said"(second), --an associated one of--. On line 8, "portion"(first) should be --portions--. On the last line, "the ... portion" should be --a width of the associated one of said elastically extensible portions--. In claim 3, line 3, "said" should be --each--. On line 4, "a ... portion" should be --the width direction of the associated one of said elastically extensible portions--. In claim 4, line 3, "each longer side" should be--respective longer sides--. On line 4, before "have", --each-- should be inserted. Lines 5-9 should be rewritten similar to the same language in claim 1 discussed supra. On line 9, "said" should be --each--. On line 14, before "at", --said-- should be inserted. In claim 6, lines 2-3, "fiber ... and" should be deleted. In claim 9, line 3, "said" should be --each--. On line 4, "a ... portion" should be --a width direction of the associated one of said elastically extensible portions--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Are the valleys in claim 4 and the compressed portions in claim 6 one and the same, i.e. does the aggregate include only ridges and valleys of different densities at a minimum or ridges, valleys and compressed portions at a minimum?

Claim Language Interpretation

6. The term “upstanding” is defined by the American Heritage Dictionary as “standing erect or upright.” Applicants do not specifically define the term “connects”. Therefore such term is given its common, i.e. dictionary, definition, i.e. includes both direct and indirect connections. The terminology “weakly” and “weaker” used in claim 6 are considered relative absent claiming of a specific density.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3-4, 6-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Mizutani et al ‘140.

Claim 1: See Figures 1-3, i.e. the oblong absorbent article is 1, the absorbing layer is 12, the leak proof layer is 11, the standing gathers are 5. The gathers 5, see, e.g., col. 5, lines 54-58, include an “upstanding” portion, See Claim Interpretation Section supra (Note the claim language does not require the upright portion to be linearly upright) and element 15, which extends between a portion near an adjacent longer side edge of the absorbing layer and a portion 16 which portion is elastically extensible, see col. 6, lines 24-39, is substantially parallel to the absorbing layer and comes into planar contact with a wearer’s skin when worn, see, e.g., col. 5, lines 55-58, col. 8, lines 35-45 and col. 10, lines 13-20, i.e. is maintained in steric shape, i.e. the

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skin contacting portion 16 is maintained planar. As set forth at, e.g., col. 5, lines 30-57 and col. 6, lines 25-58, col. 7, lines 58-62, col. 8, lines 18-24, the portion 16 is disclosed as being made of a sheet 20 and at least one elastic member 7 which is fixed to the sheet discretely at 20b in the longitudinal direction thereof while in a stretched state and the parts of the sheet where the elastic member is not fixed are raised by contraction of the elastic member to form a plurality of hollow ridges 20a parallel to each other on a side of the skin contactable portion across the width of the portion 16, i.e. in a linear manner along the contraction direction of the elastic member and extending across the contraction direction of the member. It should be noted that the claims do not claim the sheet being planar prior to attachment to the elastic member and col. 6, lines 25-39 teach stretched out elastics which are attached to a stretched out corrugated sheet and then contract, thereby contracting the stretched out sheet.

Claim 3: As best understood due to apparently missing words the portion 15 connects a middle in a width direction of said elastically extensible portion 16, i.e. it connects such middle to the remainder of the article. It is noted the claim no longer claims connection to the middle region and note "connects" as set forth in the Claim Interpretation Section supra.

Claim 10: This claim recites capability, function or property of the structure claimed in claim 1, i.e. no additional structure is claimed. The Mizutani et al device includes all the claimed structure. Therefore, there is sufficient factual evidence to reasonably conclude that the capability, function or property would also be inherent in the same structure of Mizutani et al. See MPEP 2112.01.

Claims 4, 6: See discussion of claim 1. Additionally see, e.g., Figures 7-8B and col. 5, lines 8-19 and 44-47, col. 7, lines 32-49, col. 8, lines 5-12, which teach the portion 16 is made of

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a fiber aggregate composed of two fiber aggregate layers 20A and 20B and at least one elastic member 7b-7d wherein both the layers protrude toward the wearer's skin, see Figure 3 which shows layer 20B protruding between 7b and 7c and between 7c and 7d and layer 20A protruding at 20a. The portion 16 has a large number of ridges 20a formed on its side brought into contact with the wearer's skin across the width thereof and the fiber aggregate forming the ridges has been compressed to have a lower density, e.g. at 20c, than fiber aggregate 20b forming valleys between the ridges which has been compressed to a higher density. It is noted that the claim does not require the fiber aggregate forming the ridges having only a lower density.

Claim 7: See col. 4, lines 58-61, col. 8, lines 25-30 and Figures 2, 4-5.

Claim 8: See Figure 5.

Claims 9 and 11: See discussion of claims 3 and 10 supra.

Response to Arguments

9. Applicants remarks have been considered but are deemed moot in that the issues addressed have not been reraised.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The '730,'972 and '445 patents also teach upright portions and elastically extensible portions. While these references do not teach the elastics being discretely attached to form ridges or fiber aggregates compressed to form ridges, 'newly cited '398 and '838, the latter cited by Applicants, as well as previously cited Buell '645 teach elastics can be attached continuously

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or discretely while stretched or not, i.e. interchangeability of various arrangements. Previously cited Correa '386 teach discretely attached elastic which form ridges and previously cited Buell teaches compressed fiber aggregates. Therefore, even if Applicants would overcome the Mizutani reference by 1.131 declaration without changing the scope of the claims it appears the claims would still be unpatentable over the combination of at least two of the other patents of record in the file.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

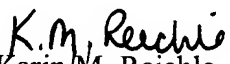
The new grounds of rejection were necessitated by the addition of claims 10-11 as well as the language added to claims 1 and 4.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 5, 2003